

14CV2729

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KENNETH NICHOLSON, DIN#: 09-A-5751,
PLAINTIFF,

-AGAINST-

CIVIL RIGHT'S
COMPLAINT PURSUANT
TO 42 U.S.C. §1983

ANTHONY J. ANNUCCI, ACTING COMMISSIONER;
PATRICK GRIFFIN, SUPERINTENDENT;
MARK ROYCE, D.S.S.;
JOHN FRUNZI, CORRECTION SERGEANT;
RYAN SOUTHARD, CORRECTION OFFICER;
CLIVE WIATHE, CORRECTION OFFICER;
IN THEIR INDIVIDUAL AND OFFICIAL CAPACITY.
DEFENDANT(S).

JURY TRIAL DEMANDED

1-)PARTIES TO THIS ACTION.

A-)PLAINTIFF'S INFORMATION:

MR. KENNETH NICHOLSON, DIN#:09-A-5751

SULLIVAN CORRECTIONAL FACILITY
P.O. Box 116
FALLSBURG, NEW YORK 2733-0116

B-)DEFENDANT'S INFORMATION:

ANTHONY J. ANNUCCI, SUED IN INDIVIDUAL AND OFFICIAL CAPACITY.
COMMISSIONER, NEW YORK STATE DEPARTMENT OF CORRECTIONS AND
COMMUNITY SUPERVISION, 1220 WASHINGTON AVENUE, BUILDING #-2
ALBANY, NEW YORK 12226-2050.

PATRICK GRIFFIN, SUED IN INDIVIDUAL AND OFFICIAL CAPACITY.
SUPERINTENDENT, SULLIVAN CORRECTIONAL FACILITY;

325 RIVERSIDE DRIVE, P.O. BOX 116, FALLSBURG, NEW YORK 12733.

MARK ROYCE, SUED IN INDIVIDUAL AND OFFICIAL CAPACITY.
DEPUTY SUPERINTENDENT OF SECURITY, SULLIVAN CORRECTIONAL FACILITY
325 RIVERSIDE DRIVE, P.O. BOX 116, FALLSBURG, NEW YORK 12733.

JOHN FRUNZI, SUED IN INDIVIDUAL AND OFFICIAL CAPACITY.
CORRECTION SERGEANT, SULLIVAN CORRECTIONAL FACILITY
325 RIVERSIDE DRIVE, P.O. BOX 116, FALLSBURG, NEW YORK 12733.

RYAN SOUTHARD, SUED IN INDIVIDUAL AND OFFICIAL CAPACITY.
CORRECTION OFFICER, SULLIVAN CORRECTIONAL FACILITY
325 RIVERSIDE DRIVE, P.O. BOX 116, FALLSBURG, NEW YORK 12733.

CLIVE WIATHE, SUED IN INDIVIDUAL AND OFFICIAL CAPACITY.
CORRECTION OFFICER, SULLIVAN CORRECTIONAL FACILITY
325 RIVERSIDE DRIVE, P.O. BOX 116, FALLSBURG, NEW YORK 12733.

2-)STATEMENT OF CLAIM.

A-). IN WHAT INSTITUTION DID THE EVENT GIVE RISE TO YOUR CLAIM
OCCUR : SULLIVAN CORRECTIONAL FACILITY

B-). WHERE IN THE INSTITUTION DID THE EVENT GIVING YOUR CLAIM
OCCUR : IN THE CORRIDOR AT THE CROSS GATES AREA

C-) WHAT DATE AND APPROXIMATE TIME DID THE EVENT GIVING TO YOUR
RISE TO YOUR CLAIM OCCUR : FEBRUARY 22nd 2014, @ APPROXIMATELY
8:45 PM O'CLOCK

3-)FACTS.

ON THE ABOVE DATE AND APPROXIMATE TIME WHILE RETURNING FROM
MEDICATION I WAS INSTRUCTED TO GET ON THE WALL BY (JOHN FRUNZI)
AFTER CLEARING THE METAL DETECTOR [NOT RINGING], ONCE ON THE WALL
RYAN SOUTHARD TOLD ME TO PUT MY HANDS ON THE WALL AND SPREAD MY
FEET, HE THEN STARTED SEARCHING ME VERY ROUGHLY, WHEN I STARTED
TO COMPLAIN (CLIVE WIATHE) CAME UP TO ME FROM MY LEFT SIDE, AND
STATED TO ME "SHUT THE FUCK UP, YOU AIN'T SO TOUGH NOW THAT YOUR
NOT ON THE BLOCK", IMMEDIATELY FOLLOWING THIS (RYAN SOUTHARD)
GRABBED MY TESTICLES AND SQUEEZED THEM EXTREMELY HARD UNTIL I
STARTED TO CRY OUT IN PAIN, AT THIS POINT (JOHN FRUNZI) STATED
SOMETHING TO THE EFFECT THAT THIS IS NOT ELMIRA, THAT I AM
NOTHING BUT A BIG OLD FAT CRY BABY, ETC ETC, THAT I THOUGHT I
WAS TOUGH SHIT WHEN I WAS AT ELMIRA CAUSE I WAS FILING ALL KIND

OF LAWSUITES, ETC ETC..... THEN ALL OF THE CORRECTION OFFICER'S IN THE CROSS GATES AREA STARTED DEBATING WHETHER THEY WERE GOING TO JUMP ME (ASSAULT ME) OR SEND ME BACK TO MY CELL, TO MY RECOLLECTION (CLIVE WIATHE) SUGGESTED THAT THEY SEND ME BACK TO MY CELL, AS I WAS PREPARING TO GO BACK TO MY CELL (RYAN SOUTHARD) TOLD ME TO GO BACK ON THE WALL HE ACTED LIKE HE WAS SEARCHING ME, YET HE GRABBED MY CHEST AND SAID BIG OLD MAN BOOBS, (JOHN FRUNZI) WHO IS WAS THE AREA SUPERVISOR AT THE TIME, AND (CLIVE WIATHE) STOOD BY WHILE (RYAN SOUTHARD) SEXUALLY ASSAULTED ME AND DID NOTHING TO STOP HIM THEY TOO ACTED UNDER A COLOR OF STATE AND FEDERAL LAW WITH AN DELIBERATELY INDIFFERENT ATTITUDE TOWARDS MY CONSTITUTIONAL RIGHTS, TO BE FREE FROM CRUEL AND UNUSUAL PUNISHMENT, AND EXCESSIVE USE OF FORCE, AS WELL AS ASSAULT,..... THE VERY NEXT DAY WHEN (RYAN SOUTHARD) CAME INTO WORK HE CAME TO MY CELL AND MADE NUMEROUS THREATS TO ME THAT I DO NOT REMEMBER SEE THE ENCLOSED INITIAL INTERNAL COMPLAINT FILED, ENCLOSED FOR THE COURTS INSPECTION..... HE STATED I SHOULD FORGET LAST NIGHT EVERY HAPPEN ETC ETC, THAT ALL I HAD TO DO IS ASK LEROY CARVER, HE CAN FIND A SHANK IN MY CELL ETC ETC..... I VE MADE DEFENDANT(S). (PATRICK GRIFFIN) (ANTHONY J. ANNUCCI) AND (MARK ROYCE) ALL AWARE OF THESE ISSUES AND THAT I FEAR FOR MY LIFE FROM ALL THE INDIVIDUALS NAMED IN MY INITIAL INTERNAL/GRIEVANCE COMPLAINT YET NONE OF THE DEFENDANTS HAVE TOOK ANY MEASURES TO MOVE ME OF THE UNIT OR MOVE (RYAN SOUTHARD) OR (JOHN FRUNZI) FROM THEIR CURRENT POST IMMEDIATELY FOLLOWING THE THREATS BY RYAN SOUTHARD ((LEROY CARVER) WAS ASSAULTED IN THE HALLWAY CROSS GATES AREA BY (JOHN FRUNZI) (TUCKER) AND NUMEROUS OTHER OFFICERS I AM IN EXTREME FEAR FOR MY LIFE AND SAFETY BEING CONFINED TO THE SULLIVAN CORRECTIONAL FACILITY.

4--EXHAUSTION OF ADMINISTRATIVE REMEDIES.

I ASK THAT THE COURTS PLEASE TAKE NOTICE THAT I HAVE FILED A GRIEVANCE IN THE FACILITY AND SENT A COPY OF THAT SAME GRIEVANCE TO C.O.R.G. WITH RESPECT TO THE 42 U.S.C. § 1915(A), HOWEVER I AM ASKING FOR AN INJUNCTIVE RELIEF AND I DO FEAR FOR MY LIFE FROM ALL THE DEFENDANTS MENTIONED IN MY COMPLAINT THAT WORKS WITHIN SULLIVAN CORRECTIONAL FACILITY. AND FOR THESE REASONS AND ANY

OTHER REASONS THE COURTS DEEM JUST AND PROPER PLEASE MOVE FORWARD WITH THIS ACTION.....

5-)INJURIES:

I NOW SUFFER WITH NIGHTMARES OF BEING GANG RAPED BY CORRECTION OFFICERS AND LAW ENFORCEMENT AGENTS, I AM AFRAID TO WALK IN THE HALLWAYS, I AM IN EXTREME FEAR FOR MY LIFE FROM ALL THE DEFENDANTS NAMED IN THIS COMPLAINT, I AM SUFFER FROM SEVER EMOTIONAL AND MENTAL DISTRESS AS WELL AS PSYCHOLOGICAL TRAUMA AND METAL ANGUISH.....

6-) RELIEF SOUGHT:

A-)PAIN AND SUFFERING \$ 5,000,000.**

B-)MENTAL ANGUISH \$ 5,000,000**

C-)PSYCHOLOGICAL TRAUMA \$ 5,000,000.**

AND ANY FURTHER RELIEF THE COURT MAY DEEM JUST AND PROPER.


INJUNCTIVE RELIEF SOUGHT :

I REQUEST A TEMPORARY RESTRAINING ORDER ORDERING THE DEFENDANTS AND/OR THEIR COUNTERPARTS FROM TAKING ANY FORM OF RETALIATION AGAINST ME AS A RESULT OF THE FILING OF THIS ACTION AND FOR MY ON SAFETY THAT AN ORDER OF PROTECTION BE ISSUED AGAINST ALL THE DEFENDANTS IN THIS ACTION TO PREVENT ANY FURTHER CONSTITUTIONAL VIOLATION AGAINST MY SELF..... AND ANY FURTHER RELIEF THE COURTS MAY DEEM JUST AND PROPER.....

PURSUANT TO 28 U.S.C. § 1746 I DECLARE UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

**DATED: FALLSBURG, NEW YORK
MARCH 6th, 2014**

RESPECTFULLY SIGNED


**KENNETH NICHOLSON, DIN#09A5751
SULLIVAN CORRECTIONAL FACILITY
P.O. BOX 116
FALLSBURG, NEW YORK 12733-0116
PLAINTIFF PRO SE**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KENNETH NICHOLSON, DIN# 09A5751
PLAINTIFF,

SWORN
AFFIDAVIT

-AGAINST-

ANTHONY J. ANNUNCI, ET AL. ACTING COMMISSIONER;
DEFENDANT(S).

I, KENNETH NICHOLSON, ASSERTS THAT I AM THE
PLAINTIFF IN THE ABOVE EN-CAPTIONED ACTION, I HEREBY
MAKE THIS AFFIDAVIT, DULY SWEARING THAT THE
MEMORANDUM/LETTER DATED 3/13/2014. AUTHORED BY
MARK ROYCE, DEPUTY SUPERINTENDENT SECURITY OF SULLIVAN
CORRECTIONAL FACILITY, SAID LETTER/ MEMORANDUM IS
ALL FALSE ACCUSATIONS, I DID NOT AUTHOR ANY
LETTER TO HIM STATING THAT I LIED OR THE FACTS
CONTAINED IN MY INTERNAL COMPLAINT/ GRIEVANCE IS
/ARE FALSE ACCUSATIONS), SAID STATEMENTS BY MARK ROYCE
ARE FABRICATED / FALSE.

MICHAEL ELLWANGER
Notary Public - State of New York
No. 01EL6242407
Qualified in Otsego County
Commission Expires May 31, 2017

SWORN TO BEFORE ME ON THIS
26TH DAY OF March 2014
NOTARY PUBLIC

RESPECTFULLY SUBMITTED

KENNETH NICHOLSON
3/25/2015

STATE OF NEW YORK DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

[SULLIVAN CORRECTIONAL FACILITY]

INMATE GRIEVANCE PROGRAM

FEB 27 2014

GRIEVANCE #:

KENNETH NICHOLSON, DIN#09-A-5751, D-NORTH 164, FEBRUARY 23rd, 2014

MY SPECIFIC GROUND'S FOR A GRIEVANCE/COMPLAINT ARE AS IS FOLLOWS:

ON FEBRUARY 22nd, 2014 @ APPROXIMATELY 8:45 pm, WHILE RETURNING FROM MEDICATION CORRECTION SERGEANT [JOHN FRUNZI] INSTRUCTED ME TO ASSUME THE PAT FRISK POSITION AFTER CLEARING (NOT RINGING) THE METAL DETECTOR AT THE CROSS GATE (AREA) ONCE ON THE WALL CORRECTION OFFICER [RYAN SOUTHARD] STARTED SEARCHING ME VERY ROUGHLY WHEN I BEGIN TO COMPLAIN 2-THINGS HAPPENED FIRST CORRECTION OFFICER [CLIVE WAITHE] CAME UP TO ME FROM MY LEFT SIDE AND STATED TO ME SHUT THE FUCK UP YOU AIN'T SO TOUGH NOW THAT YOUR NOT ON THE BLOCK, SECOND [RYAN SOUTHARD] SQUEEZED MY TESTICLE'S TO THE POINT I STARTED CRYING OUT IN PAIN, AT THIS POINT CORRECTION SERGEANT [JOHN FRUNZI] STATED TO ME THIS AIN'T ELMIRA YOU BIG FAT CRY BABY, HE STATED YOU THINK YOUR TOUGH SHIT FILING ALL KINDS OF LAWSUITS AGAINST ELMIRA, ETC ETC, THEN ALL THE OFFICER'S AT THE CROSS GATE (AREA) STARTED DEBATING WEATHER THEY WERE GOING TO JUMP ME (ASSAULT) OR SEND ME BACK TO MY CELL, AT WHICH TIME CORRECTION OFFICER [CLIVE WAITHE] SUGGESTED THAT THEY SEND ME BACK TO MY CELL AS I WAS COMING OFF THE WALL CORRECTION OFFICER [RYAN SOUTHARD] TOLD ME TO GET BACK ON THE WALL HE THEN ACTED LIKE HE WAS SEARCHING ME BUT HE GRABBED HOLD OF MY CHEST AND SQUEEZED MY CHEST REAL HARD AND SAID BIG OLD MAN BOOBS, SERGEANT [JOHN FRUNZI] NOR CORRECTION OFFICER [CLIVE WAITHE] DID NOTHING TO STOP THIS SICK OFFICER, ON TODAY'S DATE WHEN HE CAME INTO WORK AS HE IS A STEADY CORRECTION OFFICER IN D-NORTH HE CAME TO MY CELL AND SAID FORGET LAST NIGHT EVER HAPPENED IT'S IN YOUR BEST INTEREST TO JUST ASK CARVER(162) HOW I CAN BE ALL I GOT TO DO IS FIND A SHANK IN YOUR CELL DO I MAKE MYSELF CLEAR? HE WENT ON AND ON WITH NUMEROUS THREAT'S, I NOW FEAR FOR MY LIFE OF ALL THE PRISON OFFICIAL'S MENTIONED IN THIS COMPLAINT, I AM CLOSE TO MEETING MY CONDITIONAL RELEASE DATE IN AUGUST OF THIS YEAR AND FEAR THAT

[RYAN SOUTHARD] WILL HAVE ONE OF HIS INMATE FRIENDS DO SOMETHING TO ME OR PUT SOMETHING IN MY CELL TAKE NOT ICE THAT I WAS RECENTLY SET UP WITH A FALSE WEAPONS CHARGE AT ELMIRA CORRECTIONAL FACILITY, AT WHICH TIME [JOHN FRUNZI] WAS EMPLOYED AT ELMIRA CORRECTIONAL FACILITY AND MAY HAVE PLAYED A PART IN SUCH MISCONDUCT.

* ACTION REQUESTED BY ME: *
* *****

- 1-) I REQUEST AFFIRMATIVE ACTION EVERY OTHER DAY PRISONER'S ARE GETTING ASSAULTED AT THE CROSS GAMES AREA [WARREN DAVIS] [RICHARD [REDACTED]] JUST TO NAME A FEW AND CORRECTION SERGEANT [JOHN FRUNZI] PLAYS A MAJOR PART IN THESE ASSAULTS
- 2-) I REQUEST THAT RYAN SOUTHARD IS IMMEDIATELY REMOVED OF HIS DUTIES PENDING THE OUTCOME OF THIS INVESTIGATION
- 3-) I REQUEST A TEMPORARY RESTRAINING ORDER AGAINST ALL THE EMPLOYEES MENTIONED IN THIS COMPLAINT.
- 4-) BECAUSE RYAN SOUTHARD IS THE STEADY CO ASSIGNED TO D NORTH I REQUEST AN IMMEDIATE MOVE OUT OF D NORTH HOUSING UNIT AS STATED I FEAR FOR MY LIFE FROM SOUTHARD AND HIS INMATE FRIENDS.
- 5-) I REQUEST THAT NO FORM OF RETALIATION IS BROUGHT AGAINST ME FOR INITIATING THIS INTERNAL COMPLAINT/GRIEVANCE EXCESSIVE CELL SEARCHES , PLANTED DRUGS OR CONTRABAND, EXCESSIVE URINE TEST OR ANY OTHER FORM OF RETALIATION THAT SOUTHARD AND OR HIS CO WORKERS CAN BRING AGAINST ME

PURSUANT TO 28 U.S.C. § 1746 I HEREBY ASSERT UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

SIGNED AND EXECUTED THIS 23rd DAY OF FEBRUARY 2014
SULLIVAN COUNTY NEW YORK STATE

DATED: FEBRUARY 23rd, 2014
FALLSBURG, NEW YORK

RESPECTFULLY SUBMITTED


KENNETH NICHOLSON, 09A5751
GRIEVANT/PLAINTIFF PRO SE